

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK OF COURT

2004 5-3 P 4:31

BOXCAR MEDIA, LLC, et al.

Plaintiffs,

v.

REDNECKJUNK, LLC, et al.

Defendants.

CIVIL ACTION NO. 04-40051-NMG

MOTION FOR LEAVE TO SUPPLEMENT RECORD ON PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION, AND MEMORANDUM IN SUPPORT

Plaintiffs Boxcar Media, LLC, and Raceway Media, LLC, hereby move to supplement the record on their pending motion for a preliminary injunction to include the Second Supplemental Affidavit of Osmin Alvarez, attached hereto as Exhibit A, and the Affidavit of Ryan Matuski, attached hereto as Exhibit B.

In support of this motion, plaintiffs state that these affidavits are necessary to reflect certain very limited additional information discovered since Mr. Alvarez' prior affidavit was filed regarding the defendants' infringement of the plaintiff's trademarks. Essentially, these affidavits concern the defendants' misappropriation of yet another aspect of the plaintiffs' websites, as well as responding to an outrageous and unfounded accusation of wrongdoing in the defendants' papers. The affidavits do not contain new argument or alter the principles of law on which the plaintiffs' motion relies.

Respectfully submitted,
BOXCAR MEDIA, LLC and RACEWAY MEDIA, LLC,
by their attorneys,

Brenda M. Cotter (BBO #548004)

Jeffrey P. Hermes (BBO#637952)

Amanda C. Basta (BBO #655037)

BROWN RUDNICK BERLACK ISRAELS LLP

One Financial Center

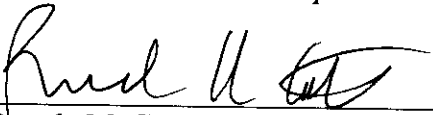
Boston, MA 02111

(617) 856-8200

Dated: May 3, 2004

CERTIFICATE OF COMPLIANCE WITH L.R. 7.1(A)(2)

I hereby certify that counsel for the plaintiffs attempted to contact defendants' counsel regarding the above motion, but did not hear from defendants' counsel prior to the time of filing this motion.

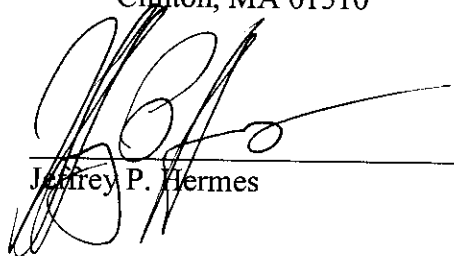

Brenda M. Cotter

CERTIFICATE OF SERVICE

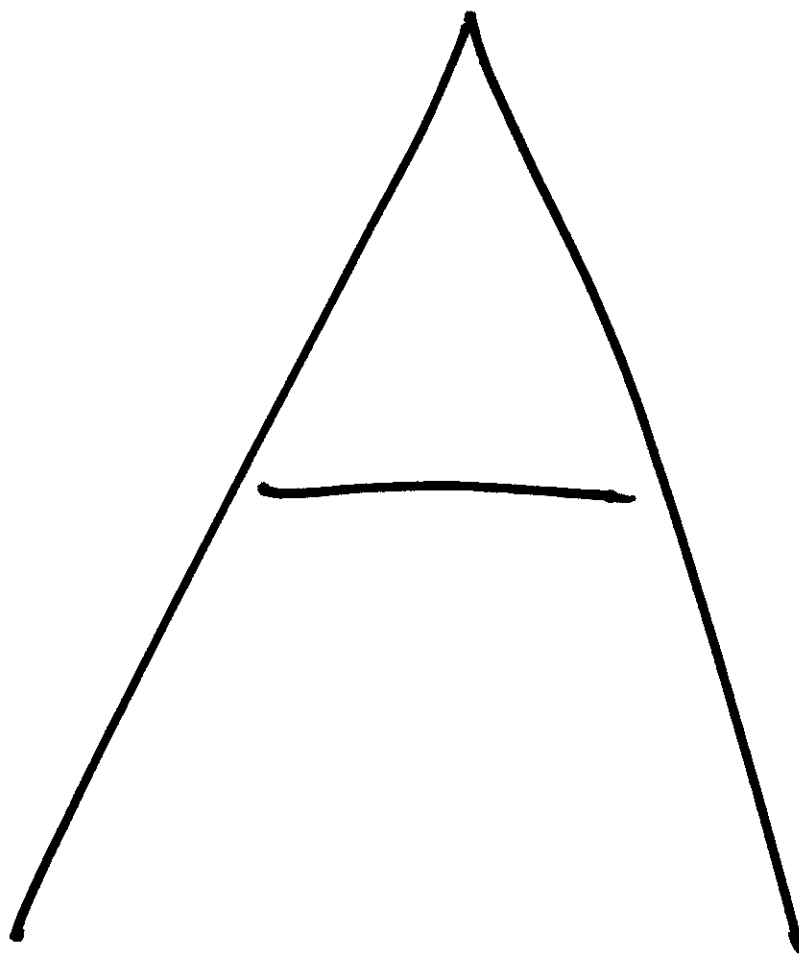
I, Jeffrey P. Hermes, counsel for the plaintiffs, do hereby certify that on this day, May 3, 2004, I served a copy of the foregoing document by mail and electronic mail to counsel for the defendants:

Robert F. Casey, Jr., Esq.
ROBERT F. CASEY, JR., P.C.
Shaker Place
233 Ayer Road – Suite 12
Harvard, MA 01451

Jean D. Sifleet, Esq.
120 South Meadow Road
Clinton, MA 01510


Jeffrey P. Hermes

Dated: May 3, 2004



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BOXCAR MEDIA, LLC, and
RACEWAY MEDIA, LLC.,

Plaintiffs,

v.

REDNECKJUNK, LLC,
DR. THOMAS P. CONNELLY, and
CONNELLY RACING, INC.,

Defendants.

CIVIL ACTION NO. 04-40051-NMG

SECOND SUPPLEMENTAL AFFIDAVIT OF OSMIN ALVAREZ

I, Osmín Alvarez, do hereby depose and state as follows:

1. I am the CEO of plaintiffs Raceway Media LLC (“Raceway”) and Boxcar Media LLC (“Boxcar”). I file this affidavit to update the Court regarding events that have occurred since the filing of my prior affidavit.

2. As discussed in my prior affidavits, after the defendants’ efforts to invest or to otherwise become involved in the plaintiffs’ business failed, they sought to trade on the success of the plaintiffs’ business by deliberately infringing the plaintiffs’ trademarks and literally copying, without prior consent, the advertisements and content from plaintiffs’ website.

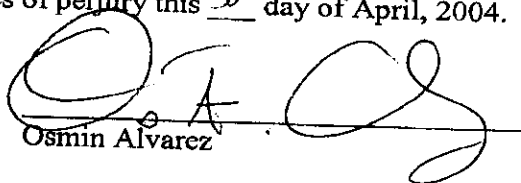
3. In addition, since my prior affidavit was filed with the Court, the defendants have attempted to generate confusion between their website and the plaintiffs’ site through yet another method. Specifically, the defendants have changed the colors used on their “rjunk.com” website, so that instead of the name of the defendants’ site appearing on their original blue background, their website name now appears on a red background. A printout of the defendants’ new site is attached hereto as Exhibit 1.

4. The particular shade of red now being used by the defendants is essentially identical to, and indistinguishable from, the shade of red that has been used for the past four (4) years for the background of the plaintiffs' trademark on the plaintiffs' website, a copy of which is attached hereto as Exhibit 2. As is clear from the Affidavit of Ryan Maturski, the defendants' selection of this color from a range of over sixteen million available colors can be nothing other than intentional, and reflects an unmistakable attempt to trade on our goodwill.

5. It has also come to my attention that in their opposition papers, the defendants have accused Raceway and/or Boxcar of violating the security of their website and changing the content of their site. These accusations are utterly outrageous and scurrilous, with no basis in fact whatsoever, and I categorically deny these charges. Indeed, Raceway and Boxcar will pursue legal remedies for defamation and commercial disparagement if such accusations are ever repeated outside of this litigation.

6. Finally, I have become aware of another instance of potential actual confusion between the parties' websites. On Thursday, April 29, 2004, I received the e-mail attached hereto as Exhibit 3. In this e-mail, a customer is asking the support staff at RacingJunk.com, the plaintiffs' website, about an offer of a "free T-shirt and Hat" for placing an advertisement. RacingJunk.com has made no such offer; however, I am aware that the defendants' website, RedneckJunk.com, has offered such rewards in the past, as shown on Exhibit L to my first affidavit.

Signed under the pains and penalties of perjury this 30th day of April, 2004.


Osmin Alvarez

1

RJUNK.COM

:: Terms :: :: Privacy :: :: Contact Us :: :: Help ::

Junk Cart

:: Buy RedneckJunk ::
 :: View Cart ::

Menu

Home
 Classifieds
 Search
 Post Ad
 Mailing List

Login
 Register
 My Account

JAYSKI'S

See what the
 buzz is about

**PLACE YOUR AD
 FOR FREE**

ARNOLD
NASCAR
 CLICK HERE...

LEAF
Racewear

LEAF
Racewear

Racing Designs
 • Paint Schemes • Uniforms • Logos
 • Transporter • Hero Cards
 • And More!



:: {RJUNK SHOWCASE CAR} Nextel Cup Car ::



Robert Yates #88 2003 Cup car

Price: \$14,500.00

Yates chassis, raced @ dover in 2003 has a standard spindal configuration. Fully plumed, oils, brake lines, and it has an oil tank.

SEE PICTURES
 OF THE NO.50
 REDNECKJUNK.COM
 DRIVEN BY DAYTONA
 500 WINNER
 DERRIKE COPE



:: Ad No. 1971 ::

567 BBC



Price: \$15,000.00

Phone:

Location: Corpus Christi, TX, US

Qty: 1

Created: April 22, 2004

:: Ad No. 1970 ::

2003 240" Slip Joint J. MARK DRAGSTER



Price: \$15,500.00

Phone: Not Available

Location: Saraland, AL, US

Qty: 1

Created: April 22, 2004

:: Ad No. 1968 ::

Bill Elliott THUNDERBAT Cup Car



Price: \$40,000.00

Phone: Not Available

Location: Papillion, NE, US

Qty: 1

Created: April 22, 2004

:: Ad No. 1967 ::

1984 CHEV CORVETTE RACE CAR / SUPER GAS



Price: \$23,900.00

Phone: Not Available

Location: Manitowoc, WI, US

Qty: 1

Created: April 22, 2004



NEW ENGLAND

COMPETITION ENGINES

HUDSON, NH
 603-881-9995

**COMING
 SOON!**

RJGOODS.COM
 PERFORMANCE AUTO PARTS

In The News

Find out what is
 being said about
 redneckjunk.com
 in the news.

Click on the links
 below to see
 some articles
 that have
 featured our
 story.

USA TODAY

Tampa Bay
 Tribune

Last Cowboy

Dallas News

TC Palm

Race Fan News

Alan Jones

Tennessean

Front Stretch

Mercury News

Claremore

Progress

Transmitted: 4/28/2004 9:52:59 PM

:: Terms :: :: Privacy :: :: Contact Us :: :: Help ::

2



MAKE MONEY:
Join our Affiliate Program today!
Read More...

SEARCH:

SEARCH

ADVANCED SEARCH

Classifieds built to go fast!

FREE RACEDAY CONTENT

PICK THE TOP 3 FINISHERS
OF THE NEXT CUP RACE!

FREE 2 PLAY

CLASSIFIEDJUNK NETWORK: BOATS • RV

TERMS • CLASSIFIED GUIDELINES • PRIVACY POLICY

Wednesday, April 28, 2004

1. HOME

1. HELP PAGE

1. CLASSIFIEDS

1. ADS BY DAY

1. LOGIN

1. POST AD

1. MOST RECENT

1. MOST POPULAR

1. SEARCH

1. HONOR PAYMENT

1. FORUM

RACEWAY MEDIA LLC

Search by Ad Number

Go To Ad

» ABOUT US
» CONTACT US
» TESTIMONIALS
» FAQ's
» EMAIL NEWSLETTER
» LINK TO US

FREE NEWSLETTER

Enter email address:

☐ TEXT ☒ HTML

TESTIMONIALS

Just wanted to say thanks! for the great site you guys have here. Sold my trailer off of this site less than 1 month! Fantastic job guys! Lots of hits on my ad daily! Thanks again!

Bill - PA

Not a Member to RacingJunk.com? Signup for FREE



Need a Trailer for 2004?
click here



Currently 35 featured ads.

GET YOUR AD FEATURED



45,000
NEW 2004 12' Hauler



27,000
NEW 2004 12' Hauler



2,000
Racing Radio/Motorola P1225 (Daved) 1/2



BEIL, SIMPSON, PERDUE, CLARKE AND IMPACT RACING PRODUCTS.

No Img 10,000
514-broker bbf



84,000
2001 F120 10'x20'x10'



33,000.00
2001 F120 10'x20'x10'



\$153530
NEW 2004 12' Hauler

ALL FEATURED RACING CLASSIFIED ADS

FREE gift with Honor Payment

Premiere Classifieds Get Listed In The Premiere Section

- Pro-Street '67 Camaro (31500)
- UNDERCOVER DRAGSTER 02 NEW 218 (\$14,900.00)
- 1966 Corvette Race Ready (29,000.00)
- Fastest 10.5" Street Car VIDEO (DVD) Drag Racing (\$18.95)
- 2004 Racecraft Slipjoint Dragster Turn Key (26,000)
- *OVER 50% LESS THAN NEW * WAS ASKING \$1800 NOW \$1200. MODEL 901, 9' DUAL DISK RAM CLUTCH, 540 BASE SPRINGS, ALL STEEL, 4 EXTRA FLOATERS, 1 EXTRA DISK, DIAL INDICATOR INCLUDED, PRICED TO SELL, \$1200 (\$1200)
- Carb Spacer 3 D CNC Machined (\$45)
- FIREBIRD BEAVISBUILT MULTI RECORD BREAKING (\$37,500.00)
- 50FT. Pace Bigfoot Slideout Hauler Showtime Special (65,900.)
- MULTI-CAR/TRUCK TEAM ITEMS FOR SALE ()

ALL Premiere Racing Classified Ads

Gallery Classifieds Get A Gallery Listing

- blown alcohol engines
OFFER:1500.00
- 1970 Monte Carlo Blown Alcohol Drag Car
OFFER:\$32,000.00
- SUPERQUICK / TRADE / REDUCED TO \$28,500
OFFER:45,000
- Retiring from Dirt Track Racing after 40 years
OFFER:

Online Store

T-Shirts, Hats & Decals
CLICK HERE

Ads by Google

Get Sponsored in 48 hours

The fastest way to car sponsorship. 2004 Car Sponsorship Search
www.carsponsorships.com

Copyright ©2004 RacewayMedia LLC All Rights Reserved.
Designated trademarks and brands are the property of their respective owners.
Use of this Web site constitutes acceptance of the
RacewayMedia LLC Terms, Classified Guidelines and Privacy Policy

©2004 Raceway Media, LLC
Box 491, North Adams, MA 01247
Tel: 413.663.3496 • Fax: 413.663.3615
Email: support@racingjunk.com

A Boxcar Media, LLC design
106 Main Street, North Adams, MA 01247
Tel: 413.663.3384 • Fax: 413.663.3615

WebTV is currently not supported on this site.
page execution took 17ms

Add Free Stats

113 visitors currently on the site

3

-----Original Message-----

From: RacingJunk.com Support [mailto:support@racingjunk.com]
Sent: Thursday, April 29, 2004 4:50 PM
To: osmin@boxcarmedia.com; ccorrigan@racewaymedia.com
Subject: Fw: Phone call

----- Forwarded Message -----

From: "Rob Russell" <rrussell@swri.org>
To: <question@racingjunk.com>
Sent: Thu, 29 Apr 2004 14:41:57 -0500
Subject: Phone call

Dear sir or maam, I just received a phone call from a woman that said she was from RacingJunk.com. She said that I would receive a free T-shirt and Hat from RacingJunk.com since I placed an ad today. If this is true, could you please have her call me back. I was kind of caught off guard here at work. My number is 210-632-4970. Thanks, Rob Russell
----- End of Forwarded Message -----

If you need anything else please let me know.

RacingJunk.com
Raceway Media LLC
106 Main Street
North Adams, MA 01247
www.racewaymedia.com
T: 413-663-3384
F: 413-663-3615
staff@racingjunk.com

B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BOXCAR MEDIA, LLC, and
RACEWAY MEDIA, LLC.,

Plaintiffs,

v.

REDNECKJUNK, LLC,
DR. THOMAS P. CONNELLY, and
CONNELLY RACING, INC.,

Defendants.

CIVIL ACTION NO. 04-40051-NMG

AFFIDAVIT OF RYAN MATURSKI

I, Ryan Maturski, do hereby depose and state as follows:

1. I am the Chief Creative Officer for plaintiffs Raceway Media LLC ("Raceway") and Boxcar Media LLC ("Boxcar"). I am in charge of technical issues for the plaintiffs' websites, including the design and appearance of the websites.

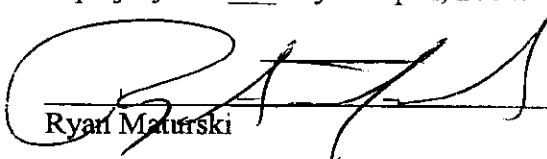
2. At the request of Raceway and Boxcar's CEO, Osmin Alvarez, I have analyzed the shades of red currently used on the defendants' website www.redneckjunk.com and the plaintiffs' website www.racingjunk.com. Every color appearing on a computer screen can be expressed as a combination of the component colors red, green and blue, with each component color having a value between zero and 255. For example, pure white can be expressed as Red: 255, Green: 255 and Blue: 255, while pure black would be expressed as Red: 0, Green: 0 and Blue: 0. Over sixteen million (16,000,000) different colors of varying hue, saturation and brightness from one end of the rainbow to the other can be identified in this manner.

3. To analyze the websites in question, I used a computer program called WhatColor, which I use to identify colors on websites for design purposes. This program can

identify the specific combination of red, green and blue that makes up any color appearing on a particular internet web page.

4. The shade of red appearing on the defendants' website ranges slightly between Red: 153, Green: 0 and Blue: 0 and Red: 153, Green: 0 and Blue: 2. The shade of red appearing on the plaintiffs' website is Red: 153, Green: 0 and Blue: 0. In other words, with over sixteen million colors available from which to choose, the defendants have selected a color which is identical or virtually identical to that used by the plaintiff.

Signed under the pains and penalties of perjury this 30th day of April, 2004.


Ryan Matuski